



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 120416007-2464-01]

RIN 0648-BB67

Fisheries of the Exclusive Economic Zone off Alaska; Monitoring and Enforcement

Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations that modify equipment and operational requirements for freezer longliners (catcher/processors) named on License Limitation Program (LLP) licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the Bering Sea and Aleutian Islands Management Area (BSAI). These regulations require vessel owners to select between two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. The selected monitoring option is required to be used when the vessel is operating in either the BSAI or Gulf of Alaska groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is fishing for groundfish under the Western Alaska Community Development Quota (CDQ) Program. A vessel owner who notifies NMFS that the vessel will

not be used to conduct directed fishing for Pacific cod in the BSAI or to conduct groundfish CDQ fishing at any time during a particular year will not be required to select one of the monitoring options and will continue to follow observer coverage and catch reporting requirements that apply to catcher/processors not subject to this action. These regulatory amendments address the need for enhanced catch accounting, monitoring, and enforcement created by the formation of a voluntary cooperative by the BSAI longline catcher/processor subsector in 2010, and are necessary to improve the precision of the accounting for allocated quota species. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the proposed rule, the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the

exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The FMPs were prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act). The FMPs are implemented by regulations at 50 CFR parts 679 and 680.

## Background

This action modifies the equipment and operational requirements for catcher/processor vessels (C/Ps) named on License Limitation Program (LLP) licenses with a Pacific cod catcher/processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both Bering Sea and Aleutian Islands. These vessels are commonly known as “freezer longliners.” They also are defined as the “longline catcher processor subsector” in the 2005 Consolidated Appropriations Act (Public Law 108-447). In 2011, 33 vessels actively fished under the 37 LLP licenses that met the criteria for the longline C/P subsector. A description of LLP license requirements, management of the longline C/P subsector, and the development of monitoring and enforcement regulations applicable to the longline C/P subsector is described in more detail in the preamble to the proposed rule (77 FR 35925, June 15, 2012) and is not repeated here.

NMFS requires new monitoring and enforcement provisions applicable to vessels participating in the BSAI longline C/P subsector as a result of several pieces of legislation passed by Congress and recent changes to fishery management regulations, including (1) legislation that created a defined class of participants in the BSAI longline C/P subsector – the 2005 Consolidated Appropriations Act (Pub. L. 108-447), (2) regulatory amendments allocating a

specific quantity of Pacific cod resources in the BSAI to the defined class of longline C/P subsector participants – detailed in the final rule implementing Amendment 85 to the BSAI FMP (74 FR 56728, November 3, 2009), and (3) legislation that allows BSAI longline C/P subsector participants to receive exclusive catch privileges – the Longline Catcher Processor Subsector Single Fishery Cooperative Act of 2010 (Pub. L. 111-335). In combination, these changes created the opportunity for the longline C/P subsector to form a voluntary fishing cooperative.

Under the voluntary cooperative, members in the longline C/P subsector allocate a proportion of the available Pacific cod resources among their members based on private contractual arrangements. The voluntary cooperative operates as a de facto catch share program because the cooperative includes all members of the subsector and together they control harvest of the sector's allocation of Pacific cod in the BSAI. Vessels fishing under a voluntary cooperative require a higher level of monitoring to ensure accurate reporting of the catch allocated to the subsector.

Catch share programs create new demands for enhanced catch accounting, monitoring, and enforcement. They increase incentives for participants to misreport catch through unauthorized discards or inaccurate catch reports. If catch can be successfully misreported or underreported, the fishing season continues longer than it should, and the vessel owners and operators are able to catch more Pacific cod than are allocated to the subsector. The fact that the vessel owners and operators are fishing under a cooperative contract to maximize the harvest and value of the Pacific cod allocation for a given halibut PSC limit provides additional opportunities for them to communicate and cooperate to underreport catch.

The voluntary cooperative and the CDQ Program present NMFS with similar monitoring and enforcement challenges. Therefore, this action applies the same requirements to longline

C/Ps operating in both the CDQ and non-CDQ fisheries. Maintaining the same monitoring measures ensures consistent methods of catch accounting, avoids confusion for observers, and reduces the risk of data processing or catch accounting errors that may occur if monitoring provisions change onboard a vessel while fishing. Additional detail on the need for enhanced monitoring requirements for catch share programs and management of the CDQ Program is provided in the preamble to the proposed rule (77 FR 35925, June 15, 2012) and not repeated here.

#### Actions Implemented by Rule

The proposed rule for this action was published in the Federal Register on June 15, 2012 (77 FR 35925). The 30-day comment period on the proposed rule ended July 16, 2012. The regulatory provisions implemented by this action are summarized here. Additional information and a description of this action are provided in detail in the preamble to the proposed rule and are not repeated here.

This action affects vessels in the longline C/P subsector when those vessels (1) operate in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is participating in the CDQ fisheries (“groundfish CDQ fishing”). Members of the subsector who do not intend to fish for Pacific cod in the BSAI or to conduct groundfish CDQ fishing during the upcoming calendar year may notify NMFS (“opt out”) and will not be subject to the enhanced monitoring requirements in that calendar year.

Members of the subsector who intend to fish for Pacific cod in the BSAI or to conduct groundfish CDQ fishing in the upcoming calendar year will be required to select one of two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. NMFS has

examined both options and determined that either option will improve catch accounting on the freezer longliners and provide the data needed to properly manage the Pacific cod and groundfish CDQ fisheries. Vessel owners will be required to select an option prior to November 1 for the upcoming calendar year. Once the selection is made, it will apply for the entire year and the vessel owner will not be able to change it during the year for which it was made.

Under the increased observer coverage monitoring option, the vessel owner and operator will be required to carry two observers and provide an observer sampling station meeting location and space requirements. The vessel operator will be required to use an electronic logbook to report catch at all times during that year. One of the two observers must have a lead level 2 certification. The observers must have the opportunity to sample all sets. A lead level 2 observer must meet minimum time-at-sea requirements. The level 2 requirement ensures that observers have experience at sea; the “lead” requirement ensures that they have had experience with longline or pot gear and that, having taken at least two cruises, they have experience with various fixed-gear operations. Because the data collected by observers is directly used to debit quota accounts, the observer estimates are carefully reviewed and scrutinized by catch share participants. NMFS has found that observers with prior experience with a specific gear type are more likely to collect usable data for quota management.

Under the scales monitoring option, the vessel owner and operator will be required to use a NMFS-approved scale to weigh all Pacific cod, provide and maintain a NMFS-approved electronic monitoring system to monitor sorting and weighing of Pacific cod, carry one lead level 2 observer, and provide an observer sampling station meeting location and space requirements. Each set must be weighed and recorded separately. NMFS will use the weight of all catch that passes over the scale to account for Pacific cod catch. The vessel operator will be required to use

an electronic logbook to report catch at all times during that year.

This action also reduces the experience requirements for lead level 2 observers to address concerns raised by the observer providers about a potential shortage of observers as a result of this action. Reducing the experience requirements will increase the pool of qualified lead level 2 observers. The number of sampled sets required for lead level 2 qualification is reduced from 60 sampled sets to 30 sampled sets.

Finally, this action removes the allowance for an “alternative fishing plan” under the CDQ Program. Because this action will standardize the monitoring options for longline C/Ps in both the CDQ and non-CDQ fisheries, the alternative fishing plan regulations are no longer necessary.

#### Comments and Responses

NMFS received 3 letters of comment from fishing organizations and 2 letters of comment from the general public addressing 13 distinct topics related to the proposed rule. A summary of the relevant comments and NMFS’ responses, follows. No changes were made to the proposed rule as a result of these comments.

Comment 1: The commenter supports the proposed requirements for two observers on longline catcher/processors, but does not support the proposed requirements for the use of a flow scale and a lead level 2 observer because of the difficult work schedule observers must follow when only one observer is aboard and the cost of installing the flow scale and camera equipment onboard.

Response: NMFS acknowledges this comment. The requirements provide vessel owners two options to meet NMFS’ monitoring objectives. A vessel owner may select the scales option or the increased observer coverage option depending on which option best meets the vessel’s

annual fishing plan and is the most cost effective for their vessel. Either monitoring option will result in quality data and enable NMFS to estimate Pacific cod catch in the longline C/P sector. The costs associated with both monitoring options are described in section 1.3 of the EA/RIR (see ADDRESSES). NMFS agrees that the scale option will increase the complexity of the observer's job and, as described in section 1.3.4 of the EA/RIR (see ADDRESSES), this is part of the rationale for requiring that the single observer under this option be lead level 2 certified.

Comment 2: The increase in the total number of lead level 2 observers needed to cover the BSAI freezer longline fleet is unsustainable and, in the long term, will lead to a shortage of qualified observers. Further, all freezer longline vessels will choose the scale option in the next two years. When this occurs, the training opportunity for observers to gain lead level 2 experience will no longer be available. If adequate observers are not available in a timely manner the vessel will have to stop fishing and wait for an observer to become available, which will have negative economic consequences.

Response: NMFS disagrees. NMFS acknowledges in section 1.3 of the EA/RIR (see ADDRESSES) that obtaining lead level 2 observers may be more difficult for fishing vessels than in the past and the demand for fixed gear lead level 2 observers will be much greater than in the past. NMFS notes that there are uncertainties associated with the new observer employment market conditions that we anticipate will accompany the introduction of the restructured observer program (77 FR 23326, April 18, 2012). The proposed action for the restructured observer program would add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants. The new funding and deployment system would allow NMFS to determine when and where to deploy observers according to



management and conservation needs. We anticipate the restructured observer program will be implemented in 2013. NMFS also notes that there are additional uncertainties with the freezer longline sector's observer coverage needs as vessel operations evolve under the cooperative's catch share program.

Section 1.3.4 of the EA/RIR (see ADDRESSES) describes other ways observers can gain lead level 2 experience. While opportunities for obtaining lead level 2 qualifications within the freezer longline fleet will be limited, observers may gain experience aboard the fixed gear catcher vessels, vessels in the affected fleet that choose to "opt out" of fishing under the program, freezer longliners that fish only in the GOA, pot catcher vessels, and pot catcher/processors. However, the EA/RIR (see ADDRESSES) highlights that the restructured observer program will provide the most new opportunities for observers to acquire lead level 2 certification. In addition, through this action NMFS reduced the number of sampled sets required for lead level 2 certification by half. Both of these factors increase the likelihood that there will be sufficient lead level 2 observers in the long term. The analysis suggests that it is likely that the number of qualified lead level 2 observers will exceed the number required in any given year. The analysis highlights mobilizing fixed gear lead level 2 observers is an essential component to ensuring vessels obtain the observer coverage required without stranding vessels at the dock.

Methods exist to obtain, train, and retain the needed lead level 2 observers as explained in section 1.3.4 of the EA/RIR (see ADDRESSES). These methods include paying observers higher wages and using the voluntary cooperative's structure to compensate vessels that choose to carry an additional observer to gain the experience required for lead level 2 certification. The cooperative may be able to arrange for its members to compensate some vessels to carry an

observer in addition to the lead level 2 observer, and that observer could obtain the sampling experience needed to qualify for a lead level 2 position. The freezer longline fleet may also use the cooperative arrangements to adjust their fishing operations to ensure that a lead level 2 observer is available to the fleet and vessels are not stranded at the dock without observer coverage.

The observer employment market will play a crucial role in ensuring that enough lead level 2 observers are created and mobilized to meet the quantity demanded. Based on the analysis prepared for this action, NMFS anticipates that there will be enough lead level 2 observers to meet the requirements of this monitoring program.

Comment 3: The assumptions in the analysis about the numbers of deployments, days, and sets needed to qualify as a lead level 2 observer for nontrawl gear and the number of days that a lead level 2 observer are needed are inaccurate. NMFS has not accurately estimated the sets per day, and has failed to take account of the impact of total allowable catch (TAC) fluctuations on the need for observers.

Response: NMFS agrees in part. The freezer longline fishery's exact future observer needs are uncertain. The EA/RIR (see ADDRESSES) uses the best available information to evaluate the potential number of lead level 2 observers that may be available. NMFS has reviewed its sets per day estimates. After this review, NMFS found that it had based its estimates on longline sets rather than longline and pot sets and that it had not adequately distinguished between vessel days when an observer was aboard and vessel days at sea on which gear was retrieved. The EA/RIR (see ADDRESSES) has been revised to use the broader fixed gear (longline and pot) estimates and the more conservative parameter of vessel days when an observer was aboard. This led to a change in the number of catcher vessel sets per fishing day

from 2.63 to 1.87. The new value is known to be a conservative estimate, but NMFS believes it is an improvement from the original value.

NMFS agrees that the freezer longline fleet's observer usage may change from year to year as the TAC changes, or from vessel to vessel depending on the distribution of allocations within the voluntary cooperative. However, in its analysis of the anticipated future demand for observers, NMFS made projections assuming a fleet of the current size fishing for an entire year. This assumption is conservative, because some vessels do not fish the entire year to accommodate changes in crews, maintenance, and product offloads.

The modifications to revise the number of sets per day and the total number of days fished did not change the result of NMFS's analysis of the availability of lead level 2 observers. Therefore, no change in the regulations was made based on this comment.

Comment 4: The analysis did not consider whether the fixed gear lead level 2 observers were also trawl lead level 2 certified. If observers are lead level 2 qualified for both gear types, then they may be deployed into the trawl fishery where they are also required and unavailable to observe aboard fixed gear vessels. Therefore, the analysis may have overestimated the number of lead level 2 observers that will be available to the freezer longliners.

Response: NMFS acknowledges this comment. Section 1.3.4 of the EA/RIR (see ADDRESSES) describes that, while there were about 208 lead level 2 observers under current qualification requirements, only 39 were needed in 2010–2011. The analysis found that despite the large difference between the number of persons with the qualification and the number of persons used, the industry had difficulty finding enough lead level 2 observers. This difficulty in finding enough lead level 2 observers could be due to many factors, including observers with both trawl and fixed gear lead level 2 certification. While the analysis did not originally discuss

the reasons for the difficulties in obtaining lead level 2 observers, it has been modified to include this discussion, including the difficulties that could be associated with finding enough lead level 2 observers because some observers may have both trawl and fish gear lead level 2 certification. Although some vessel operators had problems obtaining lead level 2 observers, NMFS does not have information that suggests this difficulty prevented vessel operators from fishing. As described in the response to comment 3, NMFS cannot guarantee that lead level 2 observers will always be available. Rather, NMFS analyzed available information and assumptions to estimate potential observer availability.

Comment 5: The analysis suggests that the restructured observer program, which will start in 2013, will be a training ground for lead level 2 observers. This is an assumption about a future program that has not yet been implemented and could be wrong. It is possible that the restructured observer program will yield fewer lead level 2 observers at a slower pace than the current observer program. The lead level 2 requirement in this rule should be dropped until the restructured observer program is implemented and has fully functioned for several years.

Response: NMFS agrees that there are uncertainties about the restructured observer program's effect on the availability of lead level 2 observers to the freezer longline fleet, as discussed in section 1.3.4 of the EA/RIR (see ADDRESSES). However, NMFS disagrees that these uncertainties should delay implementation of this action. The EA/RIR (see ADDRESSES) acknowledges that the number of observers that will gain experience as a result of the restructured observer program is uncertain; a wide range of observer availability scenarios has been examined in the analysis. NMFS examined different observer coverage levels in the restructured observer program and the resulting observer recruitment levels, as well as different attrition rates, at these different observer recruitment levels.

NMFS cannot delay the implementation of the lead level 2 requirement without delaying all the monitoring requirements in this program. The lead level 2 requirement is an essential component to the suite of monitoring tools created to manage the voluntary cooperative. Without this component the monitoring program will not function as intended. NMFS must implement these monitoring measures as soon as practicable because this fleet has already formed a voluntary cooperative and to achieve the objectives identified in the purpose and need statement.

NMFS will continue to monitor the number of observers that become lead level 2 qualified in the fixed gear fleet in the partial coverage category of the restructured observer program. NMFS could reconsider the monitoring requirements for the freezer longline fleet if there is a future shortage of lead level 2 observers. Any modification to the monitoring provisions in this rule would require a new analysis and rule making. The current best information available to NMFS does not support changes to the proposed rule.

Comment 6: The industry can increase the wages it pays for lead level 2 observers, but this will not lead to sufficient increases in the numbers of observers undertaking this work. Observers are motivated by important non-wage considerations. Even if freezer longliners and observer providers invest the resources to increase the number of lead level 2 observers, there is no certainty that the observer would remain available to the freezer longline fleet.

Response: NMFS does not have statistical information about the responsiveness of observer supply to different types of compensation packages. NMFS recognizes at Section 1.3.4 of the EA/RIR (see ADDRESSES) that many observers do not recognize observing as a career, that for almost all it is a seasonal job, and that observers are motivated by many things besides their pay.

However, NMFS believes that, in general, wages are an important motivator for work effort. Increased wages are likely to motivate existing lead level 2 observers to work longer seasons, encourage existing observers within the Alaska Region to become fixed gear lead level 2 observers, and to draw qualified biologists, including observers from other regions, into the pool of North Pacific fixed gear lead level 2 observers. Increased wages for observer providers will also be necessary to encourage providers to incur the costs required in nurturing new lead level 2 observers. NMFS acknowledges that paying higher wages to lead level 2 observers will reduce the economic benefits freezer longline operators obtain from their cooperative fishing arrangements.

As discussed in section 1.3.4 of the EA/RIR (see ADDRESSES), an increase in wages paid for fixed gear lead level 2 observers should increase the number of fixed gear lead level 2 observers and decrease the demand for them as well. Freezer longliner owners could change fishing operations to increase daily production to reduce the number of days each vessel fishes each year and thereby reduce the number of days an observer is required. Vessel owners may also take steps to provide non-monetary benefits to the observers, such as improved living and working conditions to increase an observer's desire to return or to work longer aboard these freezer longliners. NMFS again acknowledges that steps like these would be a cost to freezer longliner owners and would reduce the benefits they obtain from cooperative fishing arrangements.

Comment 7: Lead level 2 observers are not needed in this program, because NMFS can collect quality data on these vessels with the current level of observer coverage. Current training already provides the observer with all of the necessary skills to work on a freezer longliner with scales and accurately provide catch and bycatch information to NMFS on a daily basis.

Response: NMFS disagrees. As stated in section 1.3.4 of the EA/RIR (see ADDRESSES), lead level 2 observers are required in this program under both the scale option and the increased observer coverage options to ensure that NMFS has quality data available on a haul-by-haul basis. The lead level 2 qualification is required for several reasons:

- Catch share programs create new incentives for operators to circumvent management measures. These incentives can be addressed in part by deploying experienced observers with specialized experience with the gear being deployed. In recent years, observer reports of harassment and intimidation in the freezer longline sector have increased. NMFS believes that, at least partly as a response to the new cooperative arrangements, vessel owners and operators are becoming more interested in haul-by-haul observer data in the freezer longline sector. As a result, some vessel operators are pressuring observers to change sample numbers, sample more, sample less, or sample differently. Experienced observers are more likely to identify vessel operator and crew actions that lead to sampling of unrepresentative sets, be more confident in their sampling decisions, and withstand pressure, particularly when only one observer may be on board.
- Performance issues with new observers can impact NMFS' monitoring of scale performance; of halibut prohibited species catch (PSC) and viability; and of all discard estimates, including Pacific cod. Experienced observers are familiar with different vessel layouts and operations. They can adapt quickly to vessel-specific conditions when assigned to a new freezer longliner. New observers or observers with little experience on fixed gear vessels need extra time to develop the best sampling techniques for that specific vessel. Lack of experience results in unsampled sets or lower data quality.

Observers with experience aboard a fixed gear vessel should be able to quickly familiarize themselves with a new vessel and establish an unbiased sampling protocol.

- The scales option requires that only Pacific cod be weighed on the flow scale. Flow scales will be new to freezer longliners and NMFS believes that the sole observer must be a lead level 2 in order to detect and minimize problems that could occur. An observer with this level of experience should have the skills necessary to solve sampling and data collection problems in this new monitoring program. An observer unfamiliar with fixed gear operations will have difficulty determining if the scale is being used correctly. An experienced observer can address scale performance issues with the responsible vessel representatives prior to disembarking the vessel.

Comment 8: The only way to maintain a sustainable supply of lead level 2 observers for the freezer longline fleet in the future is for NMFS to either eliminate the single lead level 2 requirement for most boats, or mandate a lead level 2 observer and require a second observer whose only reason for being on board would be to gain experience toward lead level 2 certification.

Response: NMFS disagrees. As discussed in the response to comment 2, our analysis indicates that a sustainable supply of lead level 2 observers should be available in the short, as well as the long, term. NMFS does not believe that mandating a second observer for training purposes is necessary. To the extent the fleet believes there may be a shortage of trained lead level 2 observers, the cooperative structure of the fleet enables participants to voluntarily work with observer providers to provide training opportunities on board participating vessels. Some of the vessels could also choose to fish under the increased observer coverage option and increase the training opportunities for new observers.



Comment 9: Compared to other fleets that require lead level 2 observers, the Pacific cod freezer longline fleet has relatively low catch rates and less species diversity. NMFS should not rely on the experience in these other fleets as a demonstration for a need for lead level 2 observers for the smaller less productive freezer longliners.

Response: NMFS disagrees. As described in the EA/RIR (see ADDRESSES) and the response to comment 7, the lead level 2 observer requirement addresses fleet incentives to circumvent management measures, the increased reliance by NMFS and industry for haul-by-haul catch composition and discard information, and the need to monitor compliance with the scale requirements.

Comment 10: The freezer longliner fishery is similar to other fixed gear quota share fisheries, such as the halibut and sablefish individual fishing quota and the Bering Sea crab catcher/processor fleets. No lead level 2 observer requirement exists for these similar fleets.

Response: NMFS disagrees. NMFS did not use the measures implemented in other programs as a rationale for determining the measures necessary for this program. NMFS examined and developed specific monitoring requirements necessary for accurate catch monitoring in the freezer longline fleet based on the specific fishery characteristics. As different programs have been developed, the nature of those programs, their goals, and the history and nature of the fishery prior to rationalization has differed and therefore, NMFS has developed different monitoring requirements for each program. The rationale for a lead level 2 observer is discussed in comment 7 and section 1.3.4 of the EA/RIR (see ADDRESSES).

Comment 11: The proposed rule and the analysis discount repeated input from industry leaders and the years of experience and knowledge of the entire pool of observer providers. Rather than accept input from these entities, NMFS is choosing to push forward with the

requirement for lead level 2 observers based on the position that this is necessary in the case of the freezer longliners because it was found to be necessary in previous rationalized fisheries.

Response: NMFS disagrees. NMFS has considered input from observer providers and freezer longline operators in preparing this final rule. NMFS staff presented the proposed requirements at a fleet meeting in May 2011 and responded to questions about the lead level 2 requirement at that time. NMFS received public testimony regarding the lead level 2 requirements during the October 2011 North Pacific Fisheries Management Council meeting and responded by explaining that the lead level 2 requirement ensures a quality monitoring program for this fishery. Following the October 2011 letter from the observer providers, NMFS contacted several observer providers to further understand their concerns. The EA/RIR (see ADDRESSES) was revised to add a new section on the lead level 2 requirement analyzing issues raised by providers. The proposed rule for this action (77 FR 35972, June 15, 2012), proposed reducing the number of sampled sets currently required to achieve lead level 2 status. This proposed change directly responded to public input. Finally, because of the public interest in the lead level 2 requirement, NMFS posted the analysis to NMFS Alaska region website earlier than required.

As noted in the responses to comments 7 and 10, NMFS the decision to require a lead level 2 observer is not related to requirements in other rationalized fisheries. NMFS acknowledges that the experience gained from these other fisheries has demonstrated the need for lead level 2 observers to address incentives to misreport catch. NMFS determined that requiring observers that have the most experience and knowledge of fishing operations aboard fixed gear vessels was essential to ensure this new and unique program functions as anticipated.

Comment 12: We agree that the scale, 100 percent observer coverage, and camera requirements under the scale option will provide more precise estimates and strengthen management and enforcement under this program.

Response: NMFS agrees that the addition of flow scales, observer sampling stations, video monitoring to ensure all Pacific cod are sorted and weighed correctly, and the requirement for every vessel in this fleet to be observed will serve to improve the catch and fishing effort data in the freezer longline fleet.

Comment 13: The idea that freezer longline vessels could carry an observer in addition to the lead level 2 observer is flawed because Federal law mandates that vessel owners and operators cannot request particular individuals to work on their vessels.

Response: NMFS disagrees. Vessel owners and operators may request from the observer providers additional observers aboard their vessels. The regulations do prohibit vessels from requesting a preference for a specific observer, but there is no prohibition against requesting an additional observer in much the same way vessels currently request observers. In other fleets, vessel owners or operators have voluntarily requested an additional observer to improve data quality and observer working conditions. Similarly, freezer longline vessels have voluntarily taken extra observer coverage to monitor halibut PSC in the GOA fisheries.

#### Changes from the Proposed Rule

No changes to the regulations were made based on public comment. However, NMFS has identified two minor issues that require revisions to the proposed rule. First, this final rule does not include the proposed rule revisions to §§ 679.51, 679.53, and 679.32(c)(3)(i)(E)(1). When this proposed rule was published (June 15, 2012), NMFS expected that the final rule to restructure the Observer Program, which would add these sections, would be in effect. NMFS

predicts that the final rule to restructure the Observer Program will be published and effective after this final rule takes effect. Therefore, the proposed revisions to §§ 679.51, 679.53 and 679.32(c)(3)(i)(E)(1) in the proposed rule are reflected as revisions to §§ 679.50 and 679.32(c)(3)(i)(F)(1) in this final rule. The intent and effect of these regulations has not changed.

Second, this final rule corrects an error made in § 679.32(c)(3)(i)(F)(1) in a final rule published on February 8, 2012 (77 FR 6492). NMFS identified the error in July, 2012, after CDQ groups and other affected Pacific cod harvesting entities asked NMFS for clarification on sampling requirements for CDQ sets on vessels using nontrawl gear. When NMFS reorganized the CDQ catch monitoring regulations in the February 8, 2012, final rule, NMFS inadvertently substituted “hook-and-line gear” for “nontrawl gear” in the requirement that each set be sampled by an observer. Because nontrawl gear includes both longline and pot gear, this regulatory amendment unintentionally expanded the requirement that each set be sampled to pot catcher/processors participating in groundfish CDQ fisheries. This was not NMFS’ intent. In addition, NMFS carried this error forward in the proposed rule for this action (77 FR 35925; June 15, 2012). NMFS corrects this error by revising § 679.32(c)(3)(i)(F)(1) to remove the requirement that catcher/processors using pot gear to refer only to the observer coverage requirements that apply to these vessels and to remove the requirement that each set be sampled by an observer. This change is consistent with the regulations in effect prior to the error.

#### OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have

been issued. Because this final rule adds a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from this final rule.

#### Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on the correction to § 679.32(c)(3)(i)(F)(1) that is made in this final rule, as notice and comment is unnecessary and contrary to the public interest. After it received CDQ and affected fishery participants' clarification requests, NMFS recognized that the proposed rule inadvertently carried forward an error in § 679.32(c)(3)(i)(F)(1) that had been made in a previous final rule. This error affects only catcher/processors using pot gear in the groundfish CDQ fisheries. However, the error unintentionally increases observer sampling requirements on these vessels. By letter dated July 31, 2012, NMFS provided the CDQ groups actual notice of the error in the regulations and NMFS' intent to correct the error as soon as possible. Providing prior notice and opportunity to comment is contrary to the public interest. Unless the error is corrected immediately, public confusion regarding sampling requirements would persist and vessels would continue to be required to sample sets at a higher rate than NMFS meant to impose and was anticipated by the fishery participants. The correction will reduce the amount of sampling effort, thus freeing the affected participants from an unintended burden that affects their operations. Further, unless the error is corrected now, affected participants would continue to pay higher observer costs than was intended. No interested party will be adversely affected by this waiver.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

#### Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB). The collection-of-information requirements are presented below by OMB control number.

##### OMB Control No. 0648-0213

The reporting requirements for the C/P longline or pot gear daily cumulative logbook (DCPL) are removed for certain C/Ps with this final rule; the electronic logbook (see OMB 0648-0515) is used in place of the DCPL by freezer longliners (C/Ps) named on LLP licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the BSAI.

##### OMB Control No. 0648-0318

The Observer Program requirements are mentioned in this final rule; however, the public reporting burden for this collection-of-information is not directly affected by this final rule.

##### OMB Control No. 0648-0330

Public reporting burden is estimated to average 30 minutes for Pacific Cod Monitoring Option or Opt-out Notification Form; 2 hours for Inspection Request for an Electronic Monitoring System; 6 minutes for At-Sea Scales Inspection Request; 2 minutes for notification to observers of at-sea scale tests; 45 minutes for Record of Daily Flow Scale Test; 1 minute for printed output from at-sea scale; and 2 hours for Observer Sampling Station Inspection Request.

OMB Control No. 0648-0334

LLP license requirements are mentioned in this final rule; however, the public reporting burden for this collection-of-information is not directly affected by this final rule.

OMB Control No. 0648-0515

Public reporting burden is estimated to average 15 minutes for eLogbook registration and 41 minutes per active response and 5 minutes per inactive response for the C/P longline and pot gear eLogbook.

These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 21, 2012.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR Chapter IX and 50 CFR Chapter VI as follows:

15 CFR Chapter IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE  
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:



Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add entries in alphanumeric order for “679.28(k)”; “679.100(a) and (b)”; “679.100(c)”; and “679.100(d)”. The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
679.28(k)	-0330, -0610
* * * * *	
679.100(a) and (b)	-0330, -0515
679.100(c)	-0515
679.100(d)	-0330
* * * * *	

50 CFR Chapter VI -- FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE  
PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108–447.

4. In § 679.5, revise paragraph (f)(1)(ii) and add paragraph (f)(1)(viii) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) Catcher/processor longline and pot gear ELB. Except for catcher/processors subject to § 679.100(b), the operator of a catcher/processor using longline or pot gear may use a combination of a NMFS-approved catcher/processor longline and pot gear ELB and eLandings to record and report groundfish information. The operator may use a NMFS-approved catcher/processor longline and pot gear ELB to record daily processor identification information and catch-by-set information. In eLandings, the operator must record daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

\* \* \* \* \*

(viii) Longline catcher/processor subsector. The operator of a catcher/processor subject to § 679.100(b) must use a NMFS-approved catcher/processor longline and pot gear ELB to record processor identification information, catch-by-set information, and, if required to weigh Pacific cod on a NMFS-approved scale, the total Pacific cod weight from the scale for each set. This requirement applies for the entire year that the vessel is subject to § 679.100(b) and operating as a catcher/processor using either longline or pot gear.

\* \* \* \* \*

5. In § 679.7, add paragraph (c)(1) to read as follows:

§ 679.7 Prohibitions.

\* \* \* \* \*

(c) \* \* \*

(1) For vessel owners and operators subject to § 679.100(a), to use the vessel as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing.

\* \* \* \* \*

6. In § 679.28, add paragraph (k) to read as follows:

§ 679.28 Equipment and operational requirements.

\* \* \* \* \*

(k) Electronic monitoring in the longline catcher/processor subsector. The owner and operator of a catcher/processor subject to § 679.100(b)(2) must provide and maintain a NMFS-approved electronic monitoring system at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

(1) In order to be approved by NMFS, the vessel owner and operator must provide an electronic monitoring system that include cameras, a monitor, and a digital video recorder that must—

(i) Provide sufficient resolution and field of view to monitor all areas where Pacific cod are sorted from the catch, all fish passing over the motion-compensated scale, and all crew actions in these areas.

(ii) Have sufficient data storage capacity to record all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.).

(iii) Include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iv) Use commercially available software.

(v) Use color cameras, with a minimum of 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(vi) Record at a speed of no less than 5 frames per second at all times when Pacific cod are being sorted or weighed.

(2) NMFS staff, or any individual authorized by NMFS, must be able to view any footage from any point in the trip using a 16-bit or better color monitor that can display all cameras simultaneously and must be assisted by crew knowledgeable in the operation of the system.

(3) The vessel owner and operator must maintain the video data and make the data available to NMFS staff or any individual authorized by NMFS, upon request. The data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel owner in writing that the video data may be retained for less than this 120-day period.

(4) The vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection report onboard the vessel at all times when the vessel is required to provide an approved electronic monitoring system.

(5) The vessel owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS with all information fields accurately filled in. The application form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>). NMFS will coordinate with the vessel owner to schedule the inspection no later than 10 working days after NMFS receives a complete request form.

(6) Additional information required for an electronic monitoring system inspection. (i) A diagram drawn to scale showing all sorting locations, the location of the motion-compensated scale, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the Inspection Request for an Electronic Monitoring System form.

(ii) Any additional information requested by the Regional Administrator.

(7) Any change to the electronic monitoring system that would affect the system's functionality or ability to meet the requirements described at paragraph (k)(1) of this section must be submitted to, and approved by, NMFS in writing before that change is made.

(8) Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(9) After an inspection, NMFS will issue an electronic monitoring system inspection report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (k) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

7. In § 679.32, revise paragraph (c)(3)(i)(F)(1), and remove paragraph (c)(3)(ii)(G) to read as follows:

§ 679.32 CDQ fisheries monitoring and catch accounting.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(F) \* \* \*

(1) Operators of catcher/processors using hook-and-line gear must comply with § 679.100. Operators of catcher/processors using pot gear must comply with observer coverage requirements at §679.50(c)(4)(iii)(D); and

\* \* \* \* \*

8. In § 679.50, remove and reserve paragraph (c)(4)(iii)(C), revise paragraph (c)(1) introductory text and paragraph (j)(1)(v)(E)(3), and add paragraph (c)(8) to read as follows:

§ 679.50 Groundfish Observer Program.

\* \* \* \* \*

(c) \* \* \*

(1) Unless otherwise specified in paragraphs (c)(4) through (8) of this section, observer coverage is required as follows:

\* \* \* \* \*

(8) Longline catcher/processor subsector. The owner and operator of a catcher/processor subject to § 679.100(b) must comply with the following observer coverage requirements:

(i) Increased observer coverage option. If the vessel owner selects the increased observer coverage option under § 679.100(b)(1), at least two observers must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. At least one of the observers must be certified as a lead level 2 observer as described at § 679.50(j)(1)(v)(E)(3). More than two observers are required if the observer workload would otherwise preclude sampling as required under § 679.100(b)(1)(ii).

(ii) Scales option. If the vessel owner selects the scales option under § 679.100(b)(2), one lead level 2 observer as described at paragraph (j)(1)(v)(E)(3) of this section must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(v) \* \* \*

(E) \* \* \*

(3) A “lead” level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear.

\* \* \* \* \*

10. Add subpart I to part 679 to read as follows:

Subpart I--Equipment and Operational Requirements for the Longline Catcher/Processor

Subsector

§ 679.100 Applicability.

The owner and operator of a vessel named on an LLP license with a Pacific cod catcher-processor hook-and-line endorsement for the Bering Sea, Aleutian Islands or both the Bering Sea and Aleutian Islands must comply with the requirements of this subpart.

(a) Opt out selection. Each year, the owner of a vessel subject to this subpart who does not intend to directed fish for Pacific cod in the BSAI or conduct groundfish CDQ fishing at any time during a year may, by November 1 of the year prior to fishing, submit to NMFS a completed notification form to opt out of directed fishing for Pacific cod in the BSAI and groundfish CDQ fishing in the upcoming year. The notification form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>). Once the vessel owner has selected to opt out, the owner must ensure that the vessel is not used as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing during the specified year.

(b) Monitoring option selection. Each year, the owner of a vessel subject to this subpart that does not opt out under paragraph (a) of this section must, by November 1 of the year prior to fishing, submit a completed notification form for one of two monitoring options to NMFS. The notification form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>). The vessel owner must comply with the selected monitoring option at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing for the entire upcoming calendar year. If NMFS does not receive a notification to opt out or a notification for one of the two monitoring options by November 1 of the year prior to fishing, NMFS will assign that vessel to the increased observer coverage option under paragraph (b)(1) of this section for the upcoming calendar year.

(1) Increased observer coverage option. Under this option, the vessel owner and operator must ensure that—

(i) The vessel is in compliance with observer coverage requirements described at



§ 679.50(c)(8)(i).

(ii) The time required for an observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period.

(iii) An observer sampling station meeting the requirements at § 679.28(d) is available at all times, unless otherwise approved by NMFS.

(iv) All sets are made available for sampling by an observer.

(2) Scales option. Under this option—

(i) The vessel owner and operator must ensure that—

(A) The vessel is in compliance with observer coverage requirements described at § 679.50(c)(8)(ii).

(B) All Pacific cod brought onboard the vessel is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b), and that each set is weighed and recorded separately.

(C) An observer sampling station meeting the requirements at § 679.28(d) is available at all times, unless otherwise approved by NMFS.

(D) The vessel is in compliance with the electronic monitoring requirements described at § 679.28(k).

(ii) NMFS will use the weight of all catch that passes over the scale for the purposes of accounting for Pacific cod catch.

(iii) At the time NMFS approves the scale used to weigh Pacific cod, NMFS will provide the vessel owner or operator with one of the following designations on the scale inspection report that will be used for catch accounting of Pacific cod for the duration of the approval period:

(A) Scale prior to bleeding. If the scale is located before the location where Pacific cod are bled, a PRR of 1.00 will be applied to all catch weighed on the motion-compensated scale.

(B) Scale between bleeding and holding area. If Pacific cod are bled before being weighed and prior to the bleeding holding area, a PRR of 0.99 will be applied to all catch weighed on the scale.

(C) Scale after holding area. If Pacific cod are bled and placed in a bleeding holding area before being weighed, a PRR of 0.98 will be applied to all catch weighed on the scale.

(c) Electronic logbooks. The operator of a vessel subject to paragraph (b) of this section at any time during a year must comply with the requirements for electronic logbooks at § 679.5(f) at all times during that year.

(d) During 2013, the vessel owner that has selected the increased observer coverage option under paragraph (b)(1) of this section may make a one-time change to the scales option as described under paragraph (b)(2) of this section. The owner must submit a completed notification form no later than May 1 to change monitoring options. The change in monitoring options will become effective June 10 and will remain effective until December 31.

[FR Doc. 2012-23721 Filed 09/25/2012 at 8:45 am; Publication Date: 09/26/2012]